Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

MARY THOMAS and IVY THOMAS

Petitioners

vs.

METROPOLITAN LIFE INSURANCE COMPANY

and

DONNA POWELL-THOMAS

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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53 pp

QUESTIONS PRESENTED

1. Was the "strict compliance" standard under 5 U.S.C. Section 8705(a) misapplied by the District and Circuit Courts, where the insured prepared a beneficiary designation in his own hand in the presence of two (2) attesting witnesses, and the form was later accepted by the employing office prior to his death?

2. Does the "signed . . . writing" element of 5 U.S.C. Section 8705(a) require a marking in the signature box, as held by the District Court, or were Petitioners, as intended beneficiaries, entitled to demonstrate that the designation was valid because the decedent printed his name, and completed the form in every other respect?

PARTIES TO THE PROCEEDING

Petitioners, Mary Thomas and Ivy Thomas a/k/a Ivy Dotson were the Plaintiffs in the District Court and Appellants in the Court of Appeals. Respondent Metropolitan Life Insurance Company was a Defendant in the District Court and Appellee in the Court of Appeals. Respondent Donna Powell-Thomas was a Plaintiff/Intervenor in the District Court and Appellee in the Court of Appeals. Stewart Funeral Home, Inc. was joined as a Plaintiff in the District Court. Stewart Funeral Home, Inc. has not actively participated in the proceedings.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

MARY THOMAS and IVY THOMAS

Petitioners

vs.

METROPOLITAN LIFE INSURANCE COMPANY

and

DONNA POWELL-THOMAS

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners, Mary Thomas and Ivy Thomas respectfully request that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered in this case on February 24, 1997.

OPINIONS BELOW

The Judgment of the Court of Appeals (App. D at 5a-6a) is reported at 111 F.3d 963 (D.C. Cir. 1997). [The foregoing citation is a table reference and is not an opinion.] The Court of Appeals' Orders denying the Petition for Rehearing (App. A at 1a-2a) and Suggestion for Rehearing In Banc (App. B at 3a) are not reported. The Order of the District Court (App. F at 8a-10a) is reported at 921 F. Supp. 810 (D.C. 1996).

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on February 24, 1997. A Petition for Rehearing and a Suggestion for Rehearing In Banc, filed on March 25, 1997, was denied on June 11, 1997. This Court's jurisdiction is invoked pursuant to 28 U.S.C. Section 1254(1) (1994).

LEGAL PROVISIONS INVOLVED IN THIS CASE

1 U.S.C. Section 1 (1994).
5 U.S.C. Section 8705(a) (1994).
5 C.F.R. Sections 870.901-.902 (1995).

These provisions are set forth in the Petitioner's Appendix (App. G-J at 12a-16a).

STATEMENT OF THE CASE

Decedent Gerald C. Thomas, Jr., an employee of the District of Columbia Lottery and Charitable Games Control Board, participated in the Federal Employees Group Life Insurance (FEGLI) Program, which is administered by Respondent Metropolitan Life Insurance Company (Metlife). He insured his life for One Hundred Ninety Seven Thousand Dollars 00/100 ($197,000.00) under this program. On August 21, 1989, and April 7, 1993, Mr. Thomas named his wife, Respondent Donna Powell-Thomas, as the beneficiary of death benefits under his policy.

In October 1993, Donna Powell-Thomas filed for divorce against Gerald C. Thomas, Jr. in the Circuit Court for Prince George's County, Maryland. Mr. and Mrs. Thomas were by that time living separate and apart.

On October 13, 1993, the Decedent changed the earlier beneficiary designation by naming his mother, Mary Thomas, and his sister, Ivy Thomas, Petitioners herein, as the only recipients of the FEGLI death benefits. Mr. Thomas completed the document by writing his name and address, and by checking the box indicating "I have signed this form . . ." Two (2) co-employees signed as attesting witnesses. However, he made no marking within the signature box.

The employing office accepted and processed the form, which was forwarded to the District of Columbia

Office of Payroll and Retirement for filing. After the Office of Payroll and Retirement processed the form on October 15, 1993, the duplicate copy was sent back to Decedent's employing office.

Gerald C. Thomas, Jr., died on February 2, 1994, before the divorce proceedings were concluded. After his death, Mary Thomas and Ivy Thomas claimed the proceeds of the FEGLI policy at the invitation of the Decedent's employer. Donna Powell-Thomas also filed a claim for the FEGLI proceeds based on the previous Designation of Beneficiary forms. Only during the claims process did any issue arise about an irregularity in the Designation of Beneficiary completed by the decedent on October 13, 1993. Metlife thereafter denied all claims to the proceeds.

Petitioners, Mary Thomas and Ivy Thomas, filed this action against Metlife on August 31, 1994, in the United States District Court for the District of Columbia. Petitioners claimed entitlement to the proceeds of the life insurance policy in the name of Gerald Thomas, Jr. pursuant to the Designation of Beneficiary form completed by him on October 13, 1993. Jurisdiction was asserted under 28 U.S.C. Sections 1331 and 1332 (1994).

Respondent, Donna Powell-Thomas, filed a Motion for Leave to Intervene and a Declaratory Judgment. Respondent's basis for the Motion was that the Designation of Beneficiary form completed on October 13, 1993 was invalid because the form lacked

a signature. She asserted the prior Designation of Beneficiary forms completed on August 21, 1989, and April 7, 1993, remained valid. Respondent's Motion for Leave to Intervene and to file a Declaratory Judgment was granted.

Respondent, Metlife, deposited the policy proceeds into the Registry of the District Court pursuant to 28 U.S.C. Section 1335 and Federal Rules of Civil Procedure, Rule 67. Upon the Motion of Metlife, Stewart Funeral Home was added as a party Plaintiff, but has not otherwise participated in this case.

The Petitioners moved for Summary Judgment and requested a hearing. Some thirteen (13) months later, the District Court entered an Order denying Petitioners' Motion for Summary Judgment and Request for Hearing, and granting Respondent Donna Powell-Thomas' Motion for Declaratory Judgment (treated by the Court as a Motion for Summary Judgment). No hearing of any kind was ever conducted by the District Court.

In its opinion, the District Court, relying on prior case law requiring "strict compliance" with FEGLIA, ruled that "the decedent's acts of printing his name and checking the box indicating that he had signed the form are insufficient to constitute a signature as contemplated by the statute". (App. F at 9a). Under the reasoning of the District Court, since the form was not marked within the signature box, Petitioners could not demonstrate a valid change of beneficiary even considering the

Affidavits of the two (2) attesting witnesses.

The Petitioners, relying upon 28 U.S.C. Section 1291 (1994), appealed to the Court of Appeals for the District of Columbia. They also filed a Motion to Stay Judgment Pending Disposition of Appeal, which was granted on January 31, 1996.

The Court of Appeals, despite Petitioners' request for a hearing, affirmed, without argument, the District Court's grant of Summary Judgment to Respondent Donna Powell-Thomas. The panel determined an opinion was not needed, and entered its per curiam judgment on February 24, 1997. (App. D at 5a).

The Court of Appeals denied the Petitioners Suggestion for Rehearing In Banc with Judge Garland not participating. (App. B at 3a). The Petitioners' Petition for Rehearing was also denied. However, Judge Ginsburg of the original panel would have granted the Petition for Rehearing. (App. A at 1a-2a).

REASONS FOR GRANTING THE PETITION

This is a case of first impression with significant impact on 2.5 million federal government employees in every branch of government and 1.5 million federal retirees. At issue is the proper method for designating beneficiaries of a Federal Government Life Insurance Policy. Both courts below have failed to apply the definition of a "signature" found in 1 U.S.C. Section 1

(1994), and have instead focused on strict compliance with the Designation of Beneficiary form itself; a form that the Courts acknowledge is not even required by the Federal Employees Group Life Insurance Act (FEGLIA). (App. D at 5a and App. F at 9a-10a). This approach exalted form over substance in a manner wholly inconsistent with the statute.

The Court of Appeals affirmed the District Court decision without oral argument, despite the record showing that Petitioners' Request for Hearing had been denied in District Court. The District Court found as a matter of law that where a standard form was used, the insured was required to write his name in the signature box. The Court of Appeals never addressed that holding, but instead applied a "preponderance of the evidence" standard in assessing Petitioners' presentation before the District Court. This affirmance implied that Petitioners were afforded a trial in this matter. However, no hearing of any type has been conducted at the trial or appellate levels.

Additionally, this Court should grant certiorari because of a different outcome in another Circuit on a set of facts almost identical to this case. The United States District Court for the Middle District of Florida (The Honorable William Terrell Hodges), on July 7, 1997, ruled that "strict compliance" did not require a marking within the signature box. Furthermore, the Court found that since the insured printed his name, there were conflicting inferences on the question of intent to be weighed by the trier of fact. It denied

summary judgment as to all parties. *Metropolitan Life Ins. Co. v. Grant, et al.*, No. 96-136-Civ-Oc-10 (M.D. Fla. July 7, 1997) (Order Denying Summary Judgment) (App. K at 17a-26a). The approaches taken by the District Court and the Court of Appeals in this case were considered and specifically rejected by Judge Hodges as "not persuasive . . ." (App. K at 22a).

No decisions listed under Title 1, Section 1 of the United States Code Annotated indicate that this Court has interpreted the signature definition of 1 U.S.C. Section 1. Accordingly, this is an important question of first impression of federal law that should be settled by this Court under the facts and circumstances presented.

The millions of federal employees and retirees are entitled to guidance and clarification of the procedures utilized to carry out their intentions to change beneficiaries as their life circumstances dictate. If review is declined, the right of an insured to name a beneficiary will be severely limited. That result would clearly contradict the legislative intent of Section 8705(a) of the FEGLIA statute. A decision which distorts the law and underlying policy considerations should not stand without this Court's further review, especially considering the summary proceedings below.

ARGUMENT

I. THE COURTS BELOW MISAPPLIED THE "STRICT COMPLIANCE" STANDARD UNDER 5 U.S.C. SECTION 8705(a), SINCE THERE IS NO REQUIREMENT THAT AN INSURED MARK THE SIGNATURE BOX TO SATISFY THE "SIGNED . . . WRITING" ELEMENT OF THE STATUTE

The case *sub judice* concerns the proper method for designating a beneficiary in accordance with 5 U.S.C. Section 8705(a). Congress amended the FEGLIA statute in 1966 in reaction to a Ninth Circuit decision validating a Designation of Beneficiary found in a decedent's Will. *See Sears v. Austin*, 292 F.2d 690 (9th Cir. 1961). Administrative uniformity would have been lost in allowing an insured to change a beneficiary by will or some other document without insisting on the processing of the change by the appropriate agency. Thus the amendment clarified the legislative intent that the order of precedence set forth in the statute prevail over any extraneous document not received in the employing office before an insured's death. S. Rep. No. 1064, 89th Cong., 2d Sess. 2 (1996), reprinted in 2 U.S.C.C.A.N. 2070, 2071. "Congress sought merely to require official receipt of a designation and not to further limit the right of an insured to name a beneficiary". *Fair v. Moore*, 397 A.2d 976, 978 (D.C. App. 1979).

The Courts below erred in holding the Designation of Beneficiary invalid because the insured

made no mark in the signature box. The result is to impose an impermissible restriction on the right to name a beneficiary, such that the policy proceeds go to the person whom the insured specifically wished to exclude. Except for one explainable omission, the insured, decedent Gerald C. Thomas, Jr., in all respects completed the form in his own hand, and printed his name after designating the Petitioners as beneficiaries. This case does not involve an extraneous document, nor is there anything in the text of the FEGLIA or its legislative history to suggest that the signature must be placed on a particular line or place on the Designation of Beneficiary Form. A signature is valid without regard to where it may appear on a document. E.g., *In Re Estate of Hall*, 328 F. Supp. 1305, 1309 (D.D.C. 1971); *Ex Parte Cardoza*, 109 A. 93 (Md. 1919); *Reidy v. Almich*, 418 P.2d 390 (Ariz. App. 1966).

Petitioners recognize that courts have consistently required strict compliance with the FEGLIA statute. *See, e.g., Ward v. Stratton*, 988 F.2d 65 (8th Cir. 1993) (writing not witnessed or received in the employing office before the date of death), *Adams v. Macy*, 314 F. Supp. 399 (D. Md. 1970) (witness to the writing was also a beneficiary in direct violation of 5 U.S.C. Section 8705(a), and 5 C.F.R. 870.902(c)); *Metropolitan Life Insurance Co. v. Trainor*, 754 P.2d 427 (Colo. App. 1988) (writing to change beneficiary did not specify FEGLI policy). This rule was recognized in the District of Columbia in *Burleson v. Burleson*, 277 A.2d 647, 648 (D.C. App. 1971) where the District of Columbia Court of Appeals stated "[L]iteral compliance with the

statute is required when designating or changing beneficiaries . . ."

However, the effect of the District Court's ruling and the Court of Appeals' judgment is to require strict compliance with the form itself. The strict compliance standard was formulated to serve the statutory purpose, rather than to create artificial hurdles for validating beneficiary designations. *See Fair v. Moore*, 397 A.2d 976 (D.C. App. 1979). Petitioners seek no departure from the "strict compliance" standard, and request no waiver of the signature requirement. However, due process necessitates that they have an opportunity to demonstrate the decedent's purpose and intent in preparing the document.

By mandating that the Designation of Beneficiary be "signed," Congress provided that the document be authentic, and that the insured affirm a present intention to be bound by its contents. Section 8705(a) and its related regulations do not define the term "signed". See 5 C.F.R. Sections 870.901-.902 (1995). The trial court failed to look anywhere but to the form itself for a definition of the term "signed". 1 U.S.C. Section 1 provides general meanings for certain words used in Acts of Congress not otherwise defined. "Signature" is defined as "includ[ing] a mark when a person making the same intended it as such". U.S.C. Section 1 (1994).

The Courts below failed to recognize that courts have permitted signatures to take many shapes and forms. *E.g.*, *United States v. Wexler*, 657 F. Supp. 966

(E.D. Pa. 1987); *Carna v. Bessemer Ement Co.*, 558 F. Supp. 706 (W.D. Pa. 1983); *State v. Schell*, 224 N.E. 2d 49 (1967); *Plemens v. Diddle-Glaser, Inc.*, 224 A.2d 464 (1966). The opinions of the District and Circuit Courts are devoid of any analysis of the words "signed" or "signature," nor do they contain any discussion of relevant case law interpreting these terms.

The Court of Appeals based its affirmance on the ground Petitioners "failed to prove by a preponderance of the evidence that the insured in this case signed the contested form". (App. D at 5a). Yet, the Court failed to articulate what further proof would be needed. Viewed in its entirety, this transaction constituted a complete expression of decedent's compliance with the statute, including a signing of the document. The decedent completed the form in his own hand, checked the box with the notation "I have signed this form in the presence of two (2) witnesses who have signed below", and his personnel office filed the form with the appropriate office. The two (2) witnesses believed the form had been signed, as evidenced by the Affidavits submitted with Petitioner's Motion for Summary Judgment and Request for Hearing in the District Court. There can be no doubt of the decedent's present intention in preparing this form and printing his name.

Furthermore, the completed form was processed by the employing office and the District of Columbia Office of Payroll and Retirement. Neither office found any defect in the Designation of Beneficiary form. The decedent had no reason to believe the change in

beneficiary was not effective. A reasonable trier of fact could conclude from this evidence that the decedent intended his marks to constitute his signature.

The result urged by Petitioners falls within the "strict compliance" standard enunciated by the courts. This Court must not permit a distortion of that standard to work an injustice in this case and to create further uncertainty for the millions of affected federal government employees and retirees.

II. THE DECISION BELOW CONFLICTS WITH THE DECISION OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA IN A FACTUALLY SIMILAR CASE, RESULTING IN DIFFERENT CRITERIA FOR VALIDATING BENEFICIARY DESIGNATIONS OF FEDERAL EMPLOYEES AND RETIREES

Review by this Court is further compelled by the decision of the United States District Court for the Middle District of Florida, in the case of *Metropolitan Life Insurance Company v. Grant, et al.*, Case Number 96-136-CIV-OC-10. (App. K at 17a). On July 7, 1997, the Honorable William Terrell Hodges, United States District Judge, issued an Order denying Motions for Summary Judgment on the ground that the facts surrounding the execution of the beneficiary form permitted conflicting inferences that should be weighed by the trier of fact. The facts of that case are remarkably similar to the case *sub judice*, except that

unlike Mr. Thomas, the decedent in *Grant* failed to check the box noting "I have signed this form in the presence of two (2) witnesses who have signed below".

The *Grant* Court considered the decisions of the District Court and the Court of Appeals in this case, and observed as follows:

> "While the *Thomas* approach is certainly convenient and possesses superficial appeal, it is not persuasive to me. To be sure, FEGLIA requires strict compliance with its beneficiary designation provisions and deviations from those provisions will render an attempted designation invalid. (Internal citations omitted). However, this is not a case in which a claimant requests that partial compliance with the statute be accepted, or that non-compliance be excused. The statute does not define the term "sign". The statute does not require that a standard form be used and filled out according to its terms in order to change a beneficiary designation. In short, there is no specific statutory requirement, with which strict compliance could be required, that Mr. Gayton ran afoul of in failing to sign the designated signature line. The issue in this case, therefore, is whether Mr. Gayton signed the beneficiary designation at all." (App. K at 22a).

The *Grant* Court, contrary to the District Court and Court of Appeals in this case, stressed that the form itself was not controlling nor was the insured's usual method of signing dispositive of the issue.

In *Grant* the Court did not grant Summary Judgment because of the conflicting inferences created from the underlying facts of the case. Therefore, the parties will have their day in court. In contrast, the decisions of the District Court and the Court of Appeals in this case were delivered without the parties having the opportunity for face to face discourse. Not only was the Petitioners' Request for Hearing at the District Court level denied, but their opportunity to present argument before the Court of Appeals was also denied. A question of federal law affecting all federal employees and retirees should not be decided without an opportunity for an oral hearing to present a full consideration of the facts and the law.

If this Court denies review, the right of Gerald C Thomas, Jr. to contract for the payment of his life insurance policy will have been frustrated, and affected employees and retirees will be subject to different standards for validating beneficiary designations.

CONCLUSION

For the reasons stated above, a Writ of Certiorari should be granted to review the decision of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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APPENDIX A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7021 **September Term, 1996**
94cv01908

Mary Thomas and Ivy Thomas, *a/k/a* Ivy Dotson,
Appellants

Donna Powell-Thomas,
Appellee

v.

Metropolitan Life Insurance Company
and Stewart Funeral Home, Inc.,
Appellees

BEFORE: Ginsburg, Sentelle, and Henderson, Circuit Judges

ORDER

Upon consideration of the petition for rehearing, it is

ORDERED that the petition be denied. Appellants have failed to demonstrate that rehearing is warranted. The court wishes to clarify, however, that although it may appear from the judgment filed February 24, 1997, that the court weighed the evidence and decided the disputed issue, this court affirmed the judgment of the district court because the evidence proffered in the summary judgment pleadings failed to demonstrate the existence of sufficient evidence from which a reasonable jury could conclude by a preponderance that the insured in this case intended to sign the contested form merely by printing his name in the informational entries. Appellant would have had the burden at trial of establishing that fact. *See Rollins by Rollins v. Metropolitan Life Ins. Co., Inc.*, 912 F.2d 911, 915 (7th Cir. 1990) (person claiming entitlement to proceeds of FEGLI policy bears burden of proving the contested fact by a preponderance of the evidence). "[W]here the nonmoving party shoulders the burden of proof at trial, the movant's burden is met by a sufficient showing 'that there is an

absence of evidence to support the nonmoving party's case.'" *Frito-Lay, Inc. v. Willoughby*, 863 F.2d 1029, 1032 (D.C. Cir. 1988) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). Further, "[t]he [Supreme] Court has said that summary judgment should be granted where the evidence is such that it would require a directed verdict for the moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251 (1986) (internal quotations omitted). This is such a case. The court thus determined that there are no genuinely disputed issues of material fact.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /S/ ROBERT A. BONNER
Deputy Clerk

Circuit Judge Ginsburg would grant the petition for rehearing.

APPENDIX B

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7021 **September Term, 1996**
94cv01908

Mary Thomas and Ivy Thomas, *a/k/a* Ivy Dotson,
Appellants

Donna Powell-Thomas,
Appellee

v.

Metropolitan Life Insurance Company
and Stewart Funeral Home, Inc.,
Appellees

BEFORE: Edwards, Chief Judge; Wald, Silberman, Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel and Garland, Circuit Judges

ORDER

Upon consideration of appellants' Suggestion for Rehearing *In Banc*, and the absence of a request by any member of the court for a vote, it is

ORDERED that the suggestion be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /S/ ROBERT A. BONNER
Robert A. Bonner
Deputy Clerk

Circuit Judge Garland did not participate in this matter.

APPENDIX C

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7021 **September Term, 1996**
94cv01908

Mary Thomas and Ivy Thomas, *a/k/a* Ivy Dotson,
Appellants

Donna Powell-Thomas,
Appellee

v.

Metropolitan Life Insurance Company
and Stewart Funeral Home, Inc.,
Appellees

BEFORE: Ginsburg, Sentelle, and Henderson, Circuit Judges

ORDER

Upon consideration of appellants' motion for stay of mandate and of the response thereto, it is

ORDERED that the motion is granted. The Clerk is directed to withhold issuance of the court's mandate through July 18, 1997.

No extension of this stay will be granted.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /S/ ROBERT A. BONNER
Deputy Clerk

APPENDIX D

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7021 **September Term, 1996**
94cv01908

Mary Thomas and Ivy Thomas, *a/k/a* Ivy Dotson,
Appellants

Donna Powell-Thomas,
Appellee

v.

Metropolitan Life Insurance Company
and Stewart Funeral Home, Inc.,
Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Ginsburg, Sentelle, and Henderson, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for an opinion. *See* D.C. Cir. Rule 36(b). It is

ORDERED and **ADJUDGED** that the district court's order filed January 22, 1996, be affirmed. Assuming *arguendo* that an insured under a Federal Employees' Group Life Insurance ("FEGLI") policy is not required, when using a standard designation of beneficiary form, to use the space provided for the signature of the insured, appellants nonetheless failed to prove by a preponderance of the evidence that the insured in this case signed the contested form. Given that the insured signed his name by writing it in cursive on three of four designation of beneficiary forms in

evidence, including one which assigned to appellants any unpaid compensation owed to the insured and which was executed at the same time as the contested FEGLI form, the evidence as a whole does not support concluding that Thomas intended his name as printed in the informational entries on the contested form to constitute his signature.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41.

Per Curiam

APPENDIX E

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 96-7021 **September Term, 1996**
94cv01908

Mary Thomas and Ivy Thomas, *a/k/a* Ivy Dotson,
Appellants

Donna Powell-Thomas,
Appellee

v.

Metropolitan Life Insurance Company
and Stewart Funeral Home, Inc.,
Appellees

BEFORE: Ginsburg, Sentelle, and Henderson, Circuit Judges

ORDER

Upon consideration of the motion to modify the record, the opposition thereto, and the reply; and the briefs filed by the parties, is it

ORDERED that the motion to modify the record be granted. It is

FURTHER ORDERED, on the court's own motion, that this appeal be disposed of without oral argument on the basis of the record and the presentations in the briefs. The court has determined that oral argument will not assist the court in this case. *See* D.C. Cir. Rule 34(j).

Per Curiam

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARY THOMAS
and
IVY THOMAS,
Plaintiffs,
and
DONNA POWELL-THOMAS,
Plaintiff-Intervenor,
v.
METROPOLITAN LIFE INSURANCE CO.,
Defendant.

Civil Action No. 94-1908 (HHG)

ORDER

This case is currently before the Court on Plaintiff-Intervenor Donna Powell-Thomas's Motion for Declaratory Judgment[1] and Plaintiffs Mary and Ivy Thomas's Motion for Summary Judgment. Upon consideration of these motions, the oppositions thereto, the replies, and the entire record in this case, the Court finds that Plaintiff-Intervenor's motion should be granted and Plaintiffs' motion should be denied.

This case involves a dispute over who is the beneficiary of decedent Gerald C. Thomas's life insurance policy. On August 21, 1989, decedent executed a beneficiary designation form ("Form 1")

1. The Court will treat this motion as a motion for summary judgment. *See Mobles v. Metropolitan Life Ins. Co.*, 1995 WL 72825, *1 (D.D.C. Nov. 29, 1995). Because the sole issue before the Court involves one of statutory interpretation, *see infra*, the Court finds this case to be amenable to disposition by summary judgment. *See* Fed. R. Civ. P. 56(c).

naming his wife, Plaintiff-Intervenor Donna Powell-Thomas, as the sole beneficiary of this Federal Employees' Group Life Insurance ("FEGLI") policy. On April 7, 1993, he executed another such form ("Form 2"), again naming Powell-Thomas as the sole beneficiary of his FEGLI policy. On October 13, 1993, decedent completed yet another form ("Form 3"),[2] this time naming Plaintiffs Mary and Ivy Thomas as the beneficiaries of 35% and 65%, respectively, of the policy. Decedent filled out Form 3 by hand, printing his name, address, and date of execution. He also checked a box preceding the statement "I have signed this form in the presence of two witnesses who have signed below." The form was duly signed by two witnesses. However, the box marked "Signature of Insured" was left blank.

The Federal Employees' Group Life Insurance Act ("FEGLIA") provides that a life insurance policy shall be paid "to the person or persons surviving at the date of [the decedent's] death, in the following order of preference":

> First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office . . . . For this purpose, a designation, change or cancellation of beneficiary in a will of other document not so executed and filed has no force or effect.

5 U.S.C. § 8705(a). The sole issue for the Court to resolve in the present case is whether the form was properly "signed" as required by the statute.

The Court finds that the decedent's acts of printing his name and checking the box indicating that he had signed the form are insufficient to constitute a signature as contemplated by the statute. Courts have consistently held that FEGLIA requires strict compliance with its provisions. *E.g., Ward v. Stratton,* 988 F.2d 65, 67 (8th Cir. 1993); *Adams v. Macy,* 314 F. Supp. 399, 401 (D. Md. 1970); *Metropolitan Life Ins. Co. v. Trainor,* 754 P.2d 427, 428 (Colo. Ct. App. 1988); *Burleson v. Burleson,* 277 A.2d 647, 648 (D.C. 1971). Although there is no requirement that a designation of

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2. Although as noted *infra* the form does not bear decedent's signature, it is undisputed that he completed this form.

beneficiary be submitted on any particular form, here the decedent used a standard form which clearly indicated the proper place to affix his signature. The box was glaring left blank. Strictly construing the statute, the Court finds no basis for concluding that the form was "signed" based on his handwritten name on the line designated as the area to "Print or type name" and a checkmark in a box. Decedent had previously completed such forms in a proper manner, and thus he clearly knew how to do so. Furthermore, in several places, the form tells the policy holder that it must be signed. Because it was not signed in this case, Form 3 is invalid. Thus, according to the statute, Form 2 is still in full force and effect, and decedent's wife is the proper and sole beneficiary of the policy.

Accordingly, it is, on this 22d day of January, 1996, hereby

ORDERED that Plaintiff-Intervenor Donna Powell-Thomas's Motion for Declaratory Judgment (treated as a Motion for Summary Judgment) be and is hereby GRANTED; and it is

FURTHER ORDERED that Plaintiff-Intervenor Donna Powell-Thomas be and is hereby GRANTED a declaratory judgment that she is the sole beneficiary to the FEGLI policy of decedent Gerald C. Thomas, Jr.; and it is

FURTHER ORDERED that Plaintiffs Ivy and Mary Thomas's Motion for Summary Judgment and Request for a Hearing be and is hereby DENIED; and it is

FURTHER ORDERED that the Joint Request for a Status Conference be and is hereby DENIED; and it is

FURTHER ORDERED that judgment be entered in favor of Plaintiff-Intervenor Donna Powell-Thomas; and it is

FURTHER ORDERED that the Clerk of this Court shall forthwith disburse the policy proceeds deposited into the registry of this Court to Plaintiff-Intervenor Donna Powell-Thomas.

/S/ HAROLD H. GREENE
HAROLD H. GREENE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARY THOMAS and IVY THOMAS, Plaintiffs, and DONNA POWELL-THOMAS, Plaintiff-Intervenor, v. METROPOLITAN LIFE INSURANCE CO., Defendant.	Civil Action No. 94-1908 (HHG)

ORDER

It is this 31st day of January, 1996, hereby

ORDERED that this Court's order of January 22, 1996, in the above-captioned case be and is hereby amended to include the award of all interest accrued on the policy proceeds held in the registry of this Court to Plaintiff-Intervenor Donna Powell-Thomas.

/S/ HAROLD H. GREENE
HAROLD H. GREENE
United States District Judge

APPENDIX G

5 U.S.C. Section 8705(a) (1994).

Section 8705. Death claims; order of precedence; escheat

(a) The amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to the other next of kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

APPENDIX H

1 U.S.C. Section 1 (1994)

Section 1. Words denoting number, gender, and so forth

In determining the meaning of any Act of Congress, unless the context indicates otherwise -

"signature" or "subscription" includes a mark when the person making the same intended it as such;

APPENDIX I

5 C.F.R. Section 870.901 (1995).
Subpart I - Order of Precedence and Designation of Beneficiary

Section 870.901 Order of precedence.

(a) *Definitions.* For the purpose of this part, the following terms are defined as follows:

(1) *Child* means a legitimate child, an adopted child, or a recognized natural child but does not include a stillborn child, a stepchild , or a foster child. An individual who has attained the age 18 is considered to be an adult. However, if the age of majority in the jurisdiction in which what individual is domiciled is set at a lower age, he or she is considered to be an adult upon attaining the age designated in that jurisdiction. An adopted child does not inherit under the order of precedence specified in 5 U.S.C. 8705, other than as a designated beneficiary, from his/her natural parents but inherits from and through his or her adoptive parents. However, a child who is adopted by the spouse of his or her natural parent does inherit from that natural parent.

(2)(i) A *recognized natural child*, with respect to paternity, is one for whom the father meets one of the following:

(A) Has acknowledged paternity in writing;

(B) Has been judicially ordered to provide support;

(C) Has, before his death, been judicially decreed to be the father;

(D) Has been established as the father by a certified copy of the public record of birth or church record of baptism if the insured was the informant and so named himself as the father of the child; or

(E) Has established paternity on public records, such as school or social welfare agencies, which show that with his knowledge the insured was named as the father of the child.

(ii) Secondary evidence to support the alleged paternity, such as evidence of eligibility as a recognized natural child under other State or Federal programs or proof of inclusion of the child as a

recognized natural child on the insured's income tax returns, may also be considered in the determination process.

(3) *Parent* means the mother or father of a legitimate child or an adopted child. The term parent includes the mother of a recognized natural child and the father of recognized natural child but only if the recognized natural child meets the definition provided in paragraph (a)(2) of this section. An individual can not inherit from a child who has been adopted by someone else. However, an individual whose spouse adopted his or her child can inherit from that child.

(4) *Duly appointed representative of the insured's estate* means an individual named in an order of a court having jurisdiction over the estate of the insured which grants the individual the authority to receive, or the right to possess, the property of the insured; and also means, where the law of the domicile of the insured has provided for the administration of estates through alternative procedures which dispense with the need for a court order, an individual who demonstrates that he or she is entitled to receive, or possess, the property of the insured under the terms of those alternative procedures.

(b) If an insured provided in a valid designation of beneficiary that the proceeds of the insurance shall be payable to the insured's estate, or to the Executor, Administrator, or other representative of the insured's estate, or if the proceeds would otherwise be properly payable to the duly appointed representative of the insured's estate under the order of precedence specified in 5 U.S.C. 8705(a), payment of the proceeds to the duly appointed representative of the insured's estate will bar recovery by any other person.

APPENDIX J

5 C.F.R. Section 870.902 (1995)

Section 870.902 Designation of beneficiary.

(a) A designation of beneficiary shall be in writing, signed, and witnessed by two people, and received in the employing office (or in OPM, in the case of: (1) An annuitant or (2) a compensationer whose basic life insurance is continued) before the death of the insured.

(b) A change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by this part, shall not have any force or effect.

(c) A witness to a designation of beneficiary is ineligible to receive payment as a beneficiary.

(d) Any person, firm, corporation, or legal entity (except an agency of the Federal or District of Columbia governments) may be named as beneficiary.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted.

(f) A designation of beneficiary is automatically canceled 31 days after the employee stops being insured.

(g) If an insured person provides in a valid designation of beneficiary that a designated beneficiary shall be entitled to the proceeds of the insurance only if the beneficiary survives him/her for a period of time (not more than 30 days) as specified by the designator, no right to the insurance shall vest as to such beneficiary during that period. In the event such beneficiary does not survive the specified period, payment of the proceeds of the insurance will be made as if the beneficiary had predeceased the insured.

APPENDIX K

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

METROPOLITAN LIFE INSURANCE COMPANY, Plaintiff, -vs- BETTYE J. GRANT, EDYEMAE LARKINS GAYTON and ESTHER MALONE (named in error as ESTELLE GAYTON), as parent and natural guardian of JESSICA L. GAYTON, Defendants.	CASE NO. 96-136-Civ-Oc-10B

ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT AND TRANSFERRING CASE

Presently before the Court are the parties' cross-motions for summary judgment. The issues have been thoroughly briefed and the Court has heard oral argument.

The undisputed facts are these. At all material times until his death, Mack Arthur Gayton was employed by the United States Immigration and Naturalization Service (INS). As a federal employee, Mr. Gayton was insured under a group life insurance policy issued by the Plaintiff to the United States Office of Personnel Management (OPM) pursuant to the Federal Employees Group Life Insurance Act. 5 U.S.C. § 8701, et seq. Mr. Gayton acquired both basic and additional coverage in a total amount of $148,600.

On June 27, 1988, Mr. Gayton used a standard form generated by OPM to designate the beneficiaries of his life insurance policy. Prepared by Mr. Gayton, in his own handwriting, the form specified that the policy proceeds were to be paid to the Defendant Grant, who was then Mr. Gayton's fiancee, if she outlived him and, if not, to June Shark, Mr. Gayton's sister. The form was signed by two witnesses. Mr. Gayton printed his name and address on the form and signed it in a space designated for that purpose. The form was received by INS on July 1, 1988.

On September 14, 1990, Mr. Gayton filled out a second standard designation of beneficiary form. Like the first, this form was also prepared in Mr. Gayton's own handwriting and it listed his daughter, Jessica Gayton, and his wife, the Defendant Edyemae Gayton, as the beneficiaries of the policy, with each to take one-half of the proceeds. This form was also signed by two witnesses and Mr. Gayton had again printed his name and address on the form. However, no marking was made in the space set aside for the signature of the insured. Additionally, Mr. Gayton failed to check a box next to the affirmation "I have signed this form in the presence of the two witnesses who have signed below." Despite these deficiencies, the form was sent to INS where it was received on October 12, 1990.

Mr. Gayton died on April 21, 1995. On April 25, Edyemae Gayton filed with the Plaintiff a claim for death benefits under the policy. The Plaintiff denied the claim reasoning that the second designation of beneficiary form was ineffective because Mr. Gayton failed to sign the form in the appropriate space. Ms. Gayton subsequently retained counsel who advised the Plaintiff of his intent to bring suit to recover Ms. Gayton's share of the policy proceeds pursuant to the second designation of beneficiary form. In the interim, the Plaintiff contacted the Defendant Grant concerning her potential entitlement to the insurance benefits. However, Ms. Grant did not file a claim for benefits until more than one year had elapsed after Mr. Gayton's death.

On June 24, 1996, the Plaintiff filed its complaint for declaratory judgment and interpleader (Doc. 1). The Plaintiff requested leave to deposit the policy proceeds in the court registry; that the Court enter a judgment declaring which of the claimants is entitled to the

benefits of the policy; and, upon entry of such a judgment, that the Plaintiff be discharged from any further liability arising out of any conflicting claims to the proceeds of Mr. Gayton's life insurance policy. The litigation progressed in the usual course and all of the Defendants filed motions for summary judgment asserting their respective entitlements to the proceeds of the life insurance policy.

The entry of summary judgment is appropriate only when the court is satisfied that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED.R.CIV.P. 56(c). In applying this standard, the court must examine the pleadings, affidavits and other evidence in the record "in the light most favorable to the non-moving party." *Samples on Behalf of Samples v. Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988). The moving party bears the initial burden of establishing the nonexistence of a triable fact issue. *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2458, 91 L.Ed.2d 265 (1986). If the movant is successful on this score, the burden of production shifts to the non-moving party who must then come forward with sufficient evidence of each and every element that he or she must prove." *Rollins v. TechSOUTH, Inc.*, 833 F.2d 1525, 1528 (11th Cir. 1987). The non-moving party may not simply rest on the pleadings, but must use affidavits, depositions, answers to interrogatories or other evidence to demonstrate that a material fact issue remains to be tried. *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553.

The Federal Employees' Group Life Insurance Act (FEGLIA) establishes an order of precedence for determining who is entitled to the proceeds of a policy issued pursuant to the Act. As it pertains to this case, the Act provides that the proceeds of a life insurance policy shall be paid "to the person or persons surviving at the date of [the insured's] death, in the following order of precedence:

> First, to the beneficiary or beneficiaries designated by the employee *in a signed and witnessed writing* received before death in the employing office. . . . For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed *has no force or effect.*

> Second, if there is no designated beneficiary, to the widow or widower of the employee."

5 U.S.C. 8705(a) (1996) (emphasis added). *See also* 5 C.F.R. § 870.902 (1996). The Act also provides that if a person entitled to precedence under the statute fails to file a claim for payment within one year after the death of the insured, payment may be made as if that potential claimant had predeceased the insured. 5 U.S.C. § 8705(b).

The motions for summary judgment raise three issues under these statutory provisions; whether Mr. Gayton's failure to sign the form in the space provided for that purpose renders the second designation of beneficiaries invalid; if so, whether Ms. Grant's failure to file a claim within the one year period precludes her entitlement to the proceeds; and if not, whether the second designation, although invalid, operated to revoke the earlier document naming Ms. Grant as the beneficiary under the policy.

A. The Signed Writing Requirement

The Plaintiff and the Defendant Grant argue that Mr. Gayton's failure to sign the second beneficiary designation form in the space provided, and his failure to check the box affirming that he signed the form before two witnesses, renders the attempted substitution of beneficiaries ineffective. Thus, they claim, the designation of Ms. Grant as the beneficiary remains valid and she is, accordingly, entitled to the the policy funds as a matter of law. The Defendants Gayton and Malone counter this argument by pointing to the following facts: Mr. Gayton printed his name on the form; Mr. Gayton dated the form in a space marked "Date of Execution;" the form was signed by two witnesses in a space marked "Witness to Signature;" and Mr. Gayton sent the form to INS where it was received four and one-half years prior to his death. Given these circumstances, the Defendants Gayton and Malone maintain that appearance of Mr. Gayton's name in print is sufficient to make the form a signed writing within the meaning of § 8705(a).

The statute does not require the use of a standard form to designate a beneficiary. Neither does the statute, nor do the regulations interpreting it, define the word "signed." Further, it appears that there is only one published decision concerning

whether a failure to make any marking on the signature line of a preprinted designation form renders the attempted designation invalid as a matter of law. *Thomas v. Metropolitan Life Ins. Co.*, 921 F.Supp. 810 (D.C. 1996), *affirmed*, 111 F.3d 963 (D.C. Cir. 1997). In *Thomas*, the insured attempted to change the designation of his life insurance beneficiaries using a standard form. The form was filled out in the insured's own handwriting and was subscribed by two witnesses. The insured also check the box affirming that he signed the form in the presence of the witnesses but failed to make any markings on the signature line.

The court held that the absence of any marking in the space set aside for the insured's signature deprived the designation form of any legal effect. *Id.* at 811. Reasoning that Congress intended strict compliance with the beneficiary designation provisions of FEGLIA, the Court concluded that where an insured fails to sign in the space provided on a preprinted form, the insured can not be said to have complied with the signed writing requirement of the statute.[1] *Id.* at 811. The court noted that its approach was particularly appropriate in light of the fact that the insured had, on two prior occasions, signed the standard form in the appropriate space. *Id.* at 812.

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1. The principle that strict compliance with § 8705(a) is required may be considered a reaction to the Ninth Circuit decision in *Sears v. Austin*, 292 F.2d 690 (9th Cir. 1961), *cert. denied*, 368 U.S. 929, 82 S.Ct. 365, 7 L.Ed.2d 192 (1961), in which the court held that a life insurance beneficiary designation in a holographic will was sufficient to entitle the new beneficiary to the policy proceeds. Fearing that *Sears*, if followed, would create severe complications in the administration of FEGLIA policies, the Congress amended the statute to provide that beneficiary designations not executed in the manner provided for by § 8705(a) are of no force and effect. *See Adams v. Macy*, 314 F.Supp. 399, 400-01 (D.Md. 1970).

While the *Thomas* approach is certainly convenient and possesses superficial appeal, it is not persuasive to me.[2] To be sure, FEGLIA requires strict compliance with its beneficiary designation provisions and deviations from those provisions will render an attempted designation invalid. *E.g., Metropolitan Life Ins. Co. v. Sullivan*, 96 F.3d 18, 19-20 (2d Cir. 1996), *cert. denied*, ___ U.S. ___, 117 S.Ct. 972, 136 L.Ed.2d 836 (1997) (beneficiary designation executed by third party acting under power of attorney held invalid); *Ward v. Stratton*, 988 F.2d 65, 67-68 (letter purporting to change beneficiary designation ineffective where it was not witnessed). However, this is not a case in which a claimant requests that partial compliance with the statute be accepted, or that noncompliance be excused. The statute does not define the term "sign." The statute does not require that a standard form be used and filled out according to its terms in order to change a beneficiary designation. In short, there is no specific statutory requirement, with which strict compliance would be required, that Mr. Gayton ran afoul of in failing to sign the designated signature line. The issue in this case, therefore, is whether Mr. Gayton signed the beneficiary designation *at all*.

The Court concludes that a writing is signed as required by FEGLIA when the insured has made some marking on the document which he intends as his signature. The understanding comports with the rules of construction for the United States Code. § 1 U.S.C. § 1 (1985) ("In determining the meaning of any Act of Congress. . . 'signature'. . . includes a mark when the person making the same intended it as such"). In short, *any* mark intended as a person's signature becomes a signature. The fact—if it is a fact—that the mark or writing differs in form or style from the person's usual method of signing his or her name is of no

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2. Interestingly, in its unpublished opinion affirming the district court's entry of summary judgment, the Court of Appeals said: "Assuming arguendo that an insured under a [FEGLI] policy is not required . . . to use the space provided for the signature of the insured, appellants nonetheless failed to prove by a preponderance of the evidence that the insured in this case signed the contested form. . . [T]he evidence as a whole does not support concluding that Thomas intended his name as printed . . . on the contested form to constitute his signature." *Thomas v. Metropolitan Life Ins. Co.*, 1997 WL 159428 (D.C. Cir. 1997).

determinative legal consequence. Of course, such a difference would be an item of evidence to be taken into account in deciding whether the irregular mark or writing was intended as a valid signature (and would usually give rise to a negative inference, perhaps); but the irregularity alone is not conclusive of the issue. Additionally, although the determination of whether the insured intended a specific marking as his signature may be difficult to make in some cases, it does provide a rule with which strict compliance can be required, i.e., if no such marking exists, the insured has failed to strictly comply with the terms of the statute despite any evidence that the insured may have actually intended to designate the beneficiary named in the writing.

It is hornbook law that questions concerning an individual's intent are intensely fact driven and rarely susceptible of disposition by way of summary judgment. The Court is of the opinion that the facts surrounding the execution of the second beneficiary designation form permit conflicting inferences concerning the markings made on the form—specifically Mr. Gayton's printed name—and Mr. Gayton's intent in making them. As such, the motions for summary judgment, as they relate to the question of whether Mr. Gayton signed the form, should be denied.

B. Timely Filing of a Claim for Benefits

The Defendants Gayton and Malone argue that because the Defendant Grant failed to file a claim for benefits under the policy within one year of Mr. Gayton's death, she is time barred from asserting a claim in this action by operation of 5 U.S.C. § 8705(b). That statute provides:

> If, within 1 year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence . . . payment may be made in the order of precedence as if the person had predeceased the employee, and payment bars recovery by any other person.

The argument is without merit and contrary to the unambiguous language of the statute. The statute provides that payment *may* be made to another claimant if a potential claimant entitled to preference has not filed a claim for benefits within a year of the insured's death, not that such payment *must* be made. Further, the

statute makes clear that it is not the passage of a year from the insured's death that bars recovery by a claimant; rather, it is the payment of the proceeds to another claimant which does so.[3] In this case, although one year had elapsed from Mr. Gayton's death before the Defendant Grant filed her claim, the Plaintiff opted to make no payments to either claimant and, instead, to seek a judicial determination of the entitlement to the policy proceeds. Because no payment has been made, Ms. Grant is not time barred from pursuing her claim and Gayton and Malone's motion for summary judgment should be denied to this extent.

C. Cancellation of the First Designation

The Defendants Gayton and Malone next argue that, even if ineffective to designate a new beneficiary, the second designation does operate to cancel the first. The result of this claim, of course, is that Ms. Gayton would take the proceeds as the next claimant in the order of preference.

Again, however, the arugment is contrary to the clear statutory language. 5 U.S.C. § 8705(a) provides that any writing purporting to change a beneficiary designation under a life insurance policy issued pursuant to FEGLIA that is not executed and filed as required by the statute "has no force or effect." 5 U.S.C. § 8705(a).

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3. The authority cited by the Defendants Gayton and Malone is not to the contrary. *See Jacobs v. United States*, 794 F.Supp. 509 (S.D.N.Y. 1992); *Brown v. Wharton*, 756 F.Supp. 223 (E.D.Pa. 1990). Both of these cases involved determinations that a claimanet was time barred from asserting a claim after the insurer had paid the benefits to another claimant and neither decision suggests that the statute would bar recovery absent payment of the proceeds. *Hughes v. Goodwin*, 860 F.Supp. 272 (D.Md. 1994), addressed whether a federal employee had waived life insurance coverage under FEGLIA and is, therefore, inapposite.

The argument made by Gayton and Malone assumes that the second form was not executed as required by the statute and, given that assumption, the statute demands the conclusion that the second designation form was without effect, either in terms of changing the beneficiaries or in terms of cancelling the prior designation.[4] The motion for summary judgment should be denied.

4. Gayton and Malone maintain that the regulations interpreting the statute require that a document changing or cancelling a beneficiary, as opposed to designating one in the first instance, need only be "witnessed and filed," and not signed by the insured as required by the statute. 5 C.F.R. § 870.902(b). They do not dispute, nor could they, that under the statute, taken alone, a signed writing is necessary to cancel a previous beneficiary designation. The argument that the regulation requires something less than the statute merits no serious consideration. The statute would nonetheless trump the regulation as the definitive expression of the will of Congress.

CONCLUSION

At the hearing conducted on the summary judgment motions on May 20, 1997, the parties stipulated that, should the motions for summary judgment be denied, the balance of conveniences weighed heavily in favor of holding the trial of this case in the District of New Jersey and that venue is proper there. Having concluded that this case cannot be appropriately disposed of on the motions for summary judgment, the case will be so transferred pursuant to 28 U.S.C. § 1404(a).

Accordingly, upon due consideration,

(1) the Defendant Grant's motion for summary judgment (Doc. 16) is DENIED.

(2) The Defendants Gayton and Malone's motion for summary judgment (Doc. 28) is DENIED.

(3) This case is hereby TRANSFERRED, pursuant to 28 U.S.C. §1404(a), to the United states District Court for the District of New Jersey. The Clerk is directed to take all steps necessary to effectuate the transfer.

IT IS SO ORDERED.

DONE and ORDERED in Jacksonville, Florida, this 7th day of July, 1997.

/s/ W. Terrell Hodges

UNITED STATES DISTRICT JUDGE

Copy to counsel of record